

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. 2009G085

ORDER OF THE STATE PERSONNEL BOARD ON REMAND

NOMA MILLER,
Complainant,

vs.

DEPARTMENT OF PUBLIC SAFETY, COLORADO STATE PATROL,
Respondent.

This matter is before the Colorado State Personnel Board ("Board") at its regularly scheduled public session held on March 15, 2011. During this public session, the Board considered the record on appeal, including but not limited to:

1. Order of the State Personnel Board;
2. Amended Initial Decision of the Administrative Law Judge;
3. Complainant's Amended Opening Brief in Appeal of the ALJ's Initial Decision;
4. Respondent's Amended Answer Brief;
5. Complainant's Amended Reply to Respondent's Answer Brief.

Based upon the Board's review and consideration,

IT IS HEREBY ORDERED that Finding of Fact #51 ("The termination letter contained factual errors. Complainant failed to account for 66.5 hours instead of 75 hours. Complainant was out of the office starting on January 13, 2009 and ran out of paid leave on January 22, 2009, at which time leave without pay began.") in the Amended Initial Decision of the Administrative Law Judge is **MODIFIED** to conform to the facts, as Finding of Fact #51 is contrary to the weight of the evidence and conflicts with Findings of Fact #27 and #31-34. Findings of Fact #27 and #31-34 are as follows:

- "27. On March 6, 2009, Captain Secor presented his detailed audit findings in Complainant's evaluation, concluding that she had failed to submit leave request forms for 42 hours of missed work time, and that Captain Secor had been out of the office during 32 of those hours."
- "31. On April 9, 2008, Complainant used 7 hours of sick leave and recorded it on her timesheet. Complainant did not submit a leave slip to HR and no sick leave was subtracted from her leave bank. Captain Secor was not in the office on that day."
- "32. On June 3, 2008, Complainant used 1.5 hours of sick leave and recorded it on her timesheet. Complainant did not submit a leave slip to HR and no sick leave was subtracted from her leave bank. Captain Secor was not in the office on that day."

- “33. On August 6, 2008, Complainant used 8 hours of sick leave and recorded it on her timesheet. Complainant did not submit a leave slip to HR and no sick leave was subtracted from her leave bank. Captain Secor was in the office on that day.”
- “34. On March 20, 2009, Captain Secor issued a memo to Major Wilcoxon containing the results of his second audit, concluding that 16.5 hours of sick leave were unaccounted for during the March – September 2008 period.”

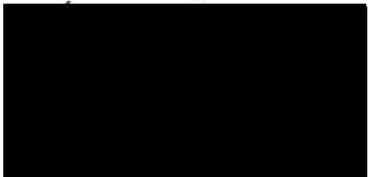
Therefore, the Board modifies Finding of Fact #51 to read as follows:

- “51. The termination letter contained factual errors. Complainant failed to account for 58.5 hours instead of 75 hours. Complainant was out of the office starting on January 13, 2009 and ran out of paid leave on January 22, 2009, at which time leave without pay began.”

IT IS FURTHER ORDERED that Conclusion of Law 3 (“The discipline imposed was within the range of reasonable alternatives;”) is **REVERSED** on the basis that the weight of the evidence and the Findings of Fact established that Complainant was a 28-year employee, with a clean record of no prior disciplinary or corrective actions, and her immediate supervisor, Captain Secor, had not lost complete trust in Complainant given her overall performance rating of “Satisfactory” in her March 6, 2009 performance evaluation and Captain Secor’s belief that a corrective action was the appropriate or likely discipline for her timesheet discrepancies.

IT IS FURTHER ORDERED that the Administrative Law Judge’s Amended Initial Decision is modified to reinstate Complainant with back pay and benefits, and, to impose disciplinary action, in lieu of the termination, consisting of the reimbursement by Complainant to Respondent of 58.5 hours of salary and a 30-day suspension of Complainant.

Dated this 18 day of **March, 2011**.



Dana Shea-Reid, Acting Board Chair
State Personnel Board
633 17th Street, Suite 1320
Denver, Colorado 80202-3604

NOTICE OF APPEAL

Each party has the following rights:

1. To abide by this decision of the State Personnel Board; or
2. To appeal this decision to the Colorado Court of Appeals within 45 days pursuant to Section 24-4-106(11), C.R.S., as provided in Section 24-50-125.4(3), C.R.S.

In the event the decision is appealed, pursuant to Section 24-4-106(11)(b), C.R.S., the party filing the appeal with the Court of Appeals must serve the State Personnel Board with a copy of the Notice of Appeal at: 633 17th Street, Suite 1320, Denver, Colorado 80202-3604. In addition to serving the State Personnel Board with a copy of the Notice of Appeal, the party filing the appeal with the Court of Appeals must name the State Personnel Board as a party (appellee) to the appeal. Section 24-4-106(11)(d), C.R.S.

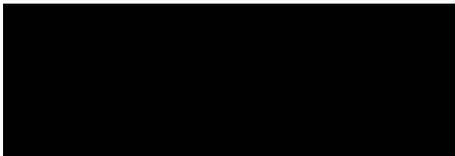
CERTIFICATE OF MAILING

This is to certify that on the 23rd day of **March, 2011**, I electronically served true copies of the foregoing **ORDER OF THE STATE PERSONNEL BOARD ON REMAND**, addressed as follows:

Nora V. Kelly, Esq.



Diane Marie Dash, Senior Assistant Attorney General



Andrea C. Woods